

VZCZCXRO4989
RR RUEHCHI RUEHCN RUEHDT RUEHHM
DE RUEHJA #0416/01 0691039
ZNR UUUUU ZZH
R 101039Z MAR 09
FM AMEMBASSY JAKARTA
TO RUEHC/SECSTATE WASHDC 1786
INFO RUEAWJB/DEPT OF JUSTICE WASHDC
RUEATRS/DEPT OF TREASURY WASHDC
RUEHXS/ASSOCIATION OF SOUTHEAST ASIAN NATIONS COLL
RUEAIIA/CIA WASHDC

UNCLAS SECTION 01 OF 03 JAKARTA 000416

DEPT FOR EAP/MTS
DEPT FOR INL CARLSON, BLOOMQUIST
DOJ FOR CRIM AAG SWARTZ
DOJ/OPDAT FOR ALEXANDRE, BERMAN, JOHNSON
DOJ/PUBLIC INTEGRITY FOR AINSWORTH

SENSITIVE
SIPDIS

E.O. 12958: N/A
TAGS: [PGOV](#) [KJUS](#) [KCOR](#) [ID](#)

SUBJECT: Indonesian corruption prosecutors experience first-hand how
U.S. prosecutes corruption

Ref: 08 Jakarta 2156 - October 2008 task force study visit

11. (SBU) Summary: Twelve prosecutors from the Indonesian Attorney General's Office Anti-Corruption Task Force participated in an INL-supported one-week study visit to learn how the U.S. investigates and prosecutes public corruption cases. The delegation, led by DOJ/OPDAT Resident Legal Advisor (RLA), met with federal and state prosecutors, FBI agents, judges, police, auditors, and other officials involved in investigating and prosecuting public corruption cases in Honolulu, Hawaii and Los Angeles, California. Since its June 2008 start, the Task Force has begun investigating and prosecuting cases, including a high-profile Ministry of Law and Human Rights corruption case involving former Directors General. However, the Task Force prosecutors' ability to successfully pursue corruption cases remains challenged by limited financial and human resources as well as bureaucratic and political restrictions. End summary.

Task Force Moving Forward on High-Profile Cases

12. (U) The Attorney General's Office (AGO) inaugurated the Anti-Corruption Task Force in June 2008 in connection with then U.S. Attorney General Mukasey's visit to Jakarta. Deputy Attorney General for Special Crimes Marwan Effendy led a competitive and more transparent selection process for the 50 Task Force members, assembling ten teams of prosecutors who work on corruption cases in four areas - finance and banking, information technology, public services, and procurement.

13. (U) The Task Force has made progress during its first nine months by initiating significant investigations. The Task Force's most high-profile case is an online notary scam that has ensnared high level Ministry of Law and Human Rights officials. Other prominent cases include bribery at the Indonesian Embassy in China and corruption in improper procurement contracts at the Ministry of Health. The Task Force has set up and is supervising smaller anti-corruption task forces based in provincial high prosecutor's offices. This month, RLA will present the Task Force with surveillance equipment that they requested as a result of the October 2008 U.S. study visit (reftel).

Study Visit Focuses on Federal, State Public Corruption

14. (U) Twelve Task Force prosecutors visited Honolulu and Los Angeles to learn how the U.S. investigates and prosecutes public corruption cases at the federal, state, and local level. The study tour was part of a \$750,000 INL-assistance project to support the

Task Force. The trip focused on how to gather and present different types of evidence in corruption cases. And it was a golden opportunity for substantive engagement with the prosecutors, most of whom had not been outside of Indonesia. The group met prosecutors from the District of Hawaii and Central District of California, Honolulu County, Hawaii State Attorney General's Office, Los Angeles County District Attorney's Office, and federal asset forfeiture teams working on corruption investigations and prosecutions. The delegation also met with judges and other court personnel and observed live courtroom proceedings, including arraignments and sentencings.

15. (U) Indonesian prosecutors are also responsible for the investigation of corruption cases. Thus, the group met with Honolulu and Los Angeles FBI agents working on corruption cases as well as the Hawaii State Auditor, Honolulu Police Department, and U.S. Marshal's Service deputies. U.S. officials presented lessons on investigating and prosecuting corruption through case studies. California officials highlighted the recent Duke Cunningham political corruption case, and Hawaii officials discussed an airport maintenance corruption case, a textbook corruption procurement case. In 2008, the Los Angeles-based Central District of California handled 50 public corruption cases - both large (elected officials) and small (mail fraud by postal workers).

Lessons Identified by Prosecutors during Study Visit

16. (U) Defining corruption: The Attorney General's Office defines corruption based on losses to the state caused by state officials. U.S. prosecutors provided a broader definition by emphasizing abuse of power and loss of public trust, rather than only financial loss.

JAKARTA 00000416 002 OF 003

The U.S. prosecutors' definition expands the pool of potential prosecutions to include both private citizens and corporations who are paying bribes, including those U.S. entities that are paying bribes to foreign government officials under the Foreign Corrupt Practices Act. In the U.S., loss to the state is only one of several factors to consider in corruption cases, whereas it is a *sin qua non* of Indonesian corruption cases. This limited definition in Indonesia restricts what is considered to be corruption. Thus, with election season approaching, Task Force prosecutors do not include campaign finance corruption as an area within their jurisdiction due to a strict interpretation of losses to the state.

17. (U) Restitution only one part of penalty: Related to their focus on losses to the state, Indonesian prosecutors placed more weight on restitution compared to their U.S. counterparts. Task Force members were more concerned about seeking restitution - recovering state losses - than seeking longer jail sentences, and seemed prepared to consider forgoing prosecution where a corrupt official returns the money. U.S. prosecutors emphasized that "If you cheat the system, you cannot buy your way out by paying the restitution immediately." U.S. prosecutors encouraged the Task Force to consider restitution and fines, but also not let payment of restitution significantly diminish a corruptor's jail sentence.

18. (SBU) Surveillance evidence: Investigators and prosecutors discussed the range of potential evidentiary tools used in corruption cases, particularly surveillance-based evidence. U.S. prosecutors highlighted the strength of surveillance-based evidence as it uses the defendants' own words against themselves. The Task Force lacks wiretapping interception equipment (only the Corruption Eradication Commission has this tool available), but can use more basic recording devices. In March and April, the RLA will deliver surveillance equipment and provide training for telephone recording devices and "body wire" recording devices worn by cooperators or undercover officers, as requested by Deputy Attorney General for Special Crimes Marwan Effendy. To find cooperators, U.S. prosecutors highlighted the importance of plea bargains with lower-level suspects involved in cases. Although some type of informal plea bargains are occasionally used in Indonesia, it lacks a clear legal basis. A more plea bargain provision is part of the criminal procedure code bill currently in the President's office.

Task Force Faces Many Obstacles

¶9. (SBU) Task Force members raised many obstacles that limit their effectiveness on corruption cases during conversations with RLA and Econoff. Task Force members were surprised to learn that U.S. investigators and prosecutors have a more flexible budget for their investigations and prosecutions. The Task Force is limited by a set budget per case that does not consider the complexity or importance of the case. Further, according to Task Force members, low remuneration at the AGO has negative effects on morale and is a factor that leads to corruption. The Supreme Court, Finance Ministry, Corruption Eradication Commission, and Supreme Audit Board have increased salaries in the past year through completion of an official bureaucratic reform process, but the AGO is still in the process. One Task Force member with 10 years experience at the AGO earns just over \$200 per month. This same member noted that senior prosecutors with 20+ years experience earn about \$300 per month. The prosecutor did acknowledge that while some low-level corruption is driven by "need," the senior-level corruption is often due to "greed."

¶10. (SBU) Political and bureaucratic constraints also limit the Task Force's effectiveness. Inter-agency cooperation is lacking; Central District of California prosecutors noted that they work with 35 agencies on investigations and prosecutions. The Task Force often has formal cooperation agreements with other government bodies, but does not work closely with these partners in practice. For example, the Financial Intelligence Center (PPATK) receives thousands of currency transfer reports (CTRs) and suspicious activity reports (SARs) from financial institutions that could be the basis to begin corruption investigations. Yet, the AGO writ large only used a handful of these reports in 2008. Task Force members also noted the political considerations when investigating senior officials. Presidential permission is required before initiating investigations of senior officials (e.g., governors, members of Parliament). However, this presidential permission restriction is often self-imposed as unsigned presidential permissions after three months are considered to be approved, according to one Task Force member.

JAKARTA 00000416 003 OF 003

¶12. (SBU) With election season in full swing, the Task Force members said that campaign finance and other election-related corruption are not within their mandate. The electoral law is enforced by the Election Supervisory Board (Bawaslu), which has an inter-agency team that includes AGO representatives. However, Task Force members noted political pressure from senior AGO officials not to bring election-related corruption cases before the election to avoid appearances of favoritism. Nine members of Parliament faced corruption charges by the Corruption Eradication Commission in the past 15 months and there are few campaign finance restrictions on individual candidates; Task Force members believe there are campaign finance corruption cases that the AGO could be prosecuting.

Attorney General Interested to Visit U.S. in May

¶13. (SBU) Attorney General Hendarman Supandji has expressed interest in visiting the U.S. in May to meet with Attorney General Holder and FBI Director Mueller. While AG Supandji would raise a range of bilateral cooperation issues, the proposed visit would be an opportunity to discuss some approaches to the challenges currently facing the AGO corruption efforts.

HUME